IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 439 OF 2006

Mr. Prakash Madhukar Patkar ....Petitioner.

V/s

The State of Maharashtra ....Respondent.

Mr. P.M. Pradhan with Mr. A.R. Pitale for the petitioner.

Ms. Rajeshree M. Gadhvi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 13th February, 2006

P.C.:

1. Heard the learned Counsel appearing on behalf of the petitioner and the learned APP for the State.

2. The applicant is seeking an anticipatory bail as he has an apprehension that he is likely to be arrested in connection with the offence which is registered under sections 409, 420, 470 and 471 of the Indian Penal Code on 19/1/2006.

3. The prosecution case is that certain amounts were defalcated by the petitioner and the other public servants and the money which was supposed to reach to the unemployed persons in Rojgar Hami Yojana, was misappropriated by showing that the amount has been

disbursed. It is alleged that investigation revealed that the money was disbursed in the name of dead persons and fictitious persons. The petitioner was working as a Sectional Engineer, P.W.D. Wada and it is submitted that he has been working in P.W.D. for the last 20 years. It is submitted that news paper report appeared in the Indian Express regarding the alleged misappropriation and irregularities which were committed in the Employment Guarantee Scheme at Jawhar and Mokhada in the year 2005. The explanation was asked for from the petitioner and, thereafter, a complaint was lodged on 19/1/2006.

4. The learned Counsel appearing on behalf of the applicant submitted that the applicant was not concerned in any way with the actual preparation of the list of persons who are entitled to receive the money in the E.G.S. Scheme and that the said job was to be performed by Talathi and Tahsildar. He submitted that the applicant was a Sectional Engineer and, therefore, he was a disbursing authority. The said disbursement was made after the initial scrutiny was made by his junior officers. It was further submitted that the Sessions Court had granted bail to the applicant in respect of the alleged irregularities which had taken place at Mokhada. He invited my

attention to the order passed by the District and Sessions Judge Shri A.J. Dholakia where the anticipatory bail was granted to the petitioner regarding the irregularities which were committed at Mokhada. He further submitted that the FIR was not registered properly and the procedure which was required to be followed under Rule 18(6) of the Rules which were framed regarding the distribution of the money under the Employment Guarantee Scheme was violated and, therefore, on that count also, the investigation was faulty. He submitted that this fact was noted by the Sessions Judge and, on that ground, the applicant was granted an anticipatory bail. He further submitted that the amount in question was paltry amount rupees five thousand and odd and, therefore, for such a paltry amount there was no necessity of arresting the petitioner and it was submitted that this custodial interrogation was not necessary as the Investigating Officer had already investigated the matter and has seized all the documents.

5. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioner. The Offence in question is a very serious offence. The applicant is a Sectional Engineer. It

was his responsibility to control and monitor the entire scheme of distribution of the money under the E.G.S. Scheme. Therefore, it cannot be said that the applicant is not responsible for the payment of money which has been allegedly made to the people who are already dead or to the people who are not in existence.

6. The Trial Court, in my view, clearly erred in relying on the said Rule 18(6) of the said Rules as the said Rules cannot override the statutory provisions under the Prevention of Corruption Act and, even otherwise, if there is any irregularity in respect of the method and manner of investigation, that by itself does not vitiate the trial or investigation which is carried by the Police Officer. The facts disclose that the monies which were meant to be paid to unemployed persons has been misappropriated. Looking at the gravity and seriousness of the offence also, in my view, this is not a fit case for grant of an anticipatory bail.

7. In the result, the application for anticipatory bail is rejected. The learned Counsel appearing on behalf of the applicant at this stage submits that the applicant shall surrender before the appropriate

Court. The applicant is given one week's time to surrender. If the applicant surrenders and makes an application for bail, the same may be considered on its own merits and the Trial Court shall not be influenced by any observation made by this Court while rejecting the first application for anticipatory bail.

8. Application is accordingly disposed of.

V.M. KANADE, J.